IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10822 of 2001

with

SPECIAL CIVIL APPLICATION No 10821 of 2001

with

SPECIAL CIVIL APPLICATION NO. 3005/2002 to 3026/2002

with

SPECIAL CIVIL APPLICATION NO. 2994/2002 to 3004/2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K J LIMBACHIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10822 of 2001
   MR SAURABH J MEHTA for Petitioners No. 1-23
   MR K.L. PANDYA, A.G.P for Respondent No. 1
   MS SEJAL K MANDAVIA for Respondents No. 2-4
   NOTICE SERVED BY DS for Respondents No. 2-3
2. Special Civil Application No. 10821 of 2001
   MR NIRZAR S DESAI for Petitioner No. 1

MR K.L. PANDYA, A.G.P for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 08/03/2002

ORAL JUDGEMENT

Looking to the fact that grievance ventilated in all these petitions is common, all the petitions are heard together at the request of the learned advocates.

Looking to the facts of the cases, all these petitions are admitted. Learned Government Pleader Shri A.D. Oza appearing for respondent no. 1 in all the petitions waives service of rule for respondent no. 1 whereas learned advocate Ms. Sejal Mandavia appearing for respondents nos. 2,3 and 4 in all the petitions waives service of rule for the said respondents. At the request of the learned advocates, all the petitions are finally heard today.

Facts giving rise to these petitions in a nut shell are as under:-

Petitioners are working as Ad hoc Work Assistants under respondent no.2. They were performing their duties at Surat and have been aggrieved by an order dated 30.10.2001 whereby they have been transferred either to Patan or Rajkot.

Learned senior advocate Shri Yatin Oza appearing for the petitioners has submitted that the impugned transfer order, whereby all the 36 petitioners have been transferred to distant places is unjust and illegal. According to him, there is no justifiable reason for transferring the Ad hoc Work Assistants who were performing their duties at Surat. It has been submitted by him that respondent no.2 Corporation is concerned with construction of a dam and canals and the petitioners are performing their duties under the Corporation. So as to enable respondent no. 2 to construct a dam on river Narmada, it has been submitted by the learned Senior advocate, four Circles have been set up for administrative purpose at Surat and the petitioners are working at `Main Head Circle' at Kevadiya Canal. It has been submitted that the petitioners mainly supervise the work which is done by Work Charged Karkoons and Daily Wagers. It has been submitted by him that not a single Work Charged Karkoon or Daily Wager has been transferred from the Circle where the petitioners are working.

Moreover, no person or no Officer under whom the petitioners are working has been transferred by the respondent authorities. He has submitted that only 36 petitioners have been picked up and have been transferred. According to him, if some construction work is over, and the surplus staff is required to be transferred, not only Ad hoc Work Assistants should be transferred from the place where the work has been completed but even the Work Charged Karkoons and Daily Wagers, who work at the ground level, are also required to be transferred. Moreover, the persons who supervise the work of the Ad hoc Work Assistants at the place of their transfer are also required to be transferred because they have to supervise the work of the Ad hoc Work Assistants at the place of their transfer. It has been submitted by him that except the petitioners, nobody has been transferred. It has also been submitted that the impugned order of transfer has been passed with a mala fide intention.

It has been submitted by the learned senior advocate for the petitioners that there were no administrative exigencies so as to transfer the petitioners. Before approaching this Court, it has been submitted by the learned advocate, the petitioners had made a representation to the respondent employer but the said representation had been turned down. After approaching this Court, again a representation was made to the State of Gujarat in pursuance of an order of this Court. The said representation was also not decided in favour of the petitioners. It has been alleged that though the decision on the representation was to be taken by the State of Gujarat, a Section Officer had taken the final decision on behalf of the State of Gujarat and, therefore, the State of Gujarat has not carried out the direction of this Court.

In pursuance of notice issued by this Court, learned advocate Ms Sejal Mandaviya has appeared for respondent no. 2 Corporation and its Officers. Affidavits have also been filed on behalf of the respondent employer. The sum and substance of the affidavits filed on behalf of the respondents and submissions made on their behalf is that almost 87% of the work which was to be done by the Circle wherein the petitioners were working at Surat had been completed. Looking to the said fact, it was not necessary to have services of the petitioners at Surat. It has been submitted that some canals are to be constructed at Rajkot and Patan and as the said work is to be completed as soon as possible, it had become necessary to transfer

the petitioners to Patan and Rajkot so that the said work of construction of canals can be completed as soon as possible. It has been submitted that the transfers have been affected for administrative reasons and normally this Court should not have judicial review of such administrative actions.

Thereafter it has been submitted that as a matter of fact the petitioners were to work in the Circle where they were working only up to 28th February, 1999. For the purpose of their transfer, necessary proposal had been submitted to the higher authorities, so that after 28th February, 1999 the petitioners can be transferred to a different place or different places where services of the petitioners were required. Unfortunately, due to bureaucratic set up, necessary decision could not be taken on the proposal and, therefore, the petitioners had been continued up to 30th October, 2001, when the impugned order of transfer was passed.

It has been thereafter submitted that certain higher officers working in the cadre of Deputy Executive Engineer and Executive Engineer are also required to be transferred but some how final decision on the proposal for their transfer has not been taken so far. It has been submitted by the learned advocate that all possible efforts are being made to see that the proposal for transfer of the Deputy Executive Engineers and Executive Engineers is looked in to at appropriate level as soon as possible and necessary transfers are effected so that work at other places can be completed as soon as possible. It has been thus submitted by the learned advocate appearing for the respondent Corporation that there is no mala fide intention behind transfer of the petitioners but only for the administrative reasons stated hereinabove, the impugned transfers have been effected.

It has been thereafter submitted that a representation made by the petitioners to the respondent Corporation was duly considered at appropriate level. Though final decision on the representation was taken by the Assistant General Manager (Personnel), the said decision was taken after consulting the Chairman and the Managing Director of the respondent Corporation. It has been thus submitted that the question with regard to transfer of the petitioners was considered at the highest level and only when it was found that services of the petitioners were not required at Surat and services of the petitioners were more required of Rajkot and Patan, the impugned action of the respondent Corporation was

confirmed by the Chairman as well as the Managing Director of the respondent Corporation.

It has also been submitted on behalf of the State of Gujarat by the Government Pleader that though the representation made to the Government was looked into by the highest authority of the department, the final order was signed by the concerned Section Officer. He has produced relevant files showing the fact that the matter pertaining to the representation was referred to the Secretary and the file containing notes of the Secretary were shown to the learned advocate appearing for the petitioners as well as to this Court, and upon perusal thereof, it is clear that though the decision communicated to the petitioners was signed by a Section Officer, it was a decision of the Secretary, Narmada Water Resources and Water Supply Department.

It has been thereafter submitted by learned advocate Ms Sejal Mandaviya for the respondent Corporation that the submission made by the learned advocate for the petitioners that there is no reduction of the strength of Daily Wagers or Work Charge karkoons at `Main Head Circle', Surat, is not correct.

It has been submitted that as work at Surat has been substantially reduced, work of ad hoc Work Assistants at Surat would be done by Work Charged Karkoons, who normally work under the ad hoc Work Assistants.

It has been submitted that senior Work Charged Karkoons will be performing duties which were being performed by the Ad hoc Work Assistants who have been transferred by virtue of the impugned order. It has been also submitted by her that there is a proposal for transfer of 139 Daily Wagers from the Circle where the petitioners were working. It has been submitted that approximately 207 Daily Wagers and Work Charged Karkoons are working in the Main Head Circle. Out of the said Daily Wagers, 151 Daily Wagers were made Work Charged Karkoons and only 56 Daily Wagers are working at present out of 207 persons who were working as Work Charged Karkoons or Daily Wagers. 139 Work Charge Karkoons or Daily Wagers shall be transferred to different places as soon as possible. It has been also submitted by her that a proposal for their transfer is pending before appropriate authority but no final decision has been taken on the said proposal. It has been submitted by her that possibly the decision with regard to the transfer shall be taken in a very near future.

It has been submitted that it is not true that except the petitioners, no other person has been transferred. Moreover, it has been submitted that the Daily Wagers and Work Charged Karkoons, who are working under the Ad hoc Work Assistants are at present doing some other work which is also of vital importance for the Corporation and the said work is not required to be supervised by the persons working in the cadre of Ad hoc Work Assistant. It has been submitted by her that all possible efforts are being made to see that the Daily Wagers, who are required elsewhere, are transferred from Main Head Circle.

I have heard the learned advocates at length and have noted the fact that upon completion of about 87% work of the Main Head Circle, services of the petitioners were not required at Surat in Main Head Circle and therefore a proposal was submitted somewhere in 1998 for their transfer from Main Head Circle, but the said proposal was not decided promptly by the concerned authorities and, therefore, the said proposal was kept pending. Ultimately, final decision to transfer the petitioners was taken on 30th September, 2001. Thus, it appears that only on account of bureaucratic set up, the delay has been caused in transferring the petitioners. This would not mean that simply because delay was caused in the past, the petitioners should be continued at Surat where their services are not required. As the proposal has now been finally accepted, the petitioners have been transferred. Moreover, the persons working in Main Head Circle as Work Charged Karkoons and Daily Wagers are also doing some other work and their services are well utilised. Moreover, some of the senior Work Charged Karkoons are doing the work of the petitioners as they are in a position to do the same on account of their seniority and experience. Be it noted that it is not for this court to run the administration. The respondent Corporation is concerned with construction of a dam and canals which are to be used for the purpose of irrigation of lands situated in different districts. It would be for the expert Officers of the respondent Corporation to decide as to how many persons should be employed at a particular place. Simply because some other higher officers are not transferred, this Court cannot come to the conclusion that services of the petitioners were required at the place where they were performing their duties. It would not be proper to have judicial review of administrative actions like transfers, more particularly when the nature of work done by the employers is of a special type.

Moreover it also appears from the record that work of a canal which is to be done at Rajkot and Patan is of vital importance and the said work is required to be completed as soon as possible. For the said purpose, services of the petitioners are required at Rajkot and Patan and, therefore, they had to be shifted to Rajkot or Patan from the Main Head Circle, where 87% of work has been completed. Assuming that there was some lethargy or mismanagement on the part of the respondent Corporation, the administrative decisions which are absolutely just and proper cannot be set aside by this Court. If, in fact 87% of the work has been completed and if some of the workers from the Main Head Circle are transferred, it would not be just and proper for the Court to interfere with the impugned order of transfer.

Averments made by learned senior advocate Shri Yatin Oza with regard to mala fide intention have not been substantiated with help of any evidence and, therefore they cannot be believed. There are 36 persons who have been transferred. Nothing has been shown by the petitioners to come to the conclusion that the respondent Corporation had grudge or prejudice against the said 36 persons working in the said cadre of Ad hoc Work Assistant. Therefore, allegations with regard to mala fides cannot be believed.

It is clear that the representations made by the petitioners had been looked into by the highest authorities of the respondent Corporation. The Chairman and the Managing Director are the most responsible authorities, who had looked into the facts of the case of the petitioners and ultimately they came to the conclusion that their services were not required in Main Head Circle. Moreover, the Secretary, Narmada Water Resources and Water Supply Department had also looked into the representation made by the petitioners in pursuance of a direction given by this Court and he also came to the conclusion that services of the petitioners were not required in Main Head Circle and, therefore, they were rightly transferred.

During the pendency of this petition, the petitioners have already been relieved from the Main Head Circle and they have resumed their duties at Rajkot or Patan. In the circumstances, it would not be proper to quash and set aside the impugned order of transfer which has been passed in the interest of administration and public interest.

It has been submitted by senior advocate Shri Y.N. Oza that one or two petitioners are having their personal difficulties and they would like to be in or near Surat. He has submitted that one of the petitioners is a widow who lost her husband before four or five months. It would be extremely difficult for her to work away form her home town and in such a case the respondent Corporation should reconsider the case of transfer of the said widow. Learned advocate Ms Sejal Mandaviya as well as the Government Pleader have very fairly submitted that if such a petitioner makes a representation, the representation would be considered with due sympathy and all possible efforts shall be made to see that such a person is accommodated in the Main Head circle or in any other circle which is in the vicinity.

For the reasons stated hereinabove, in my opinion, there is no substance in the petition and the impugned order of transfer should not be interfered with. The petitions are therefore rejected. Rule is discharged in each of the petitions with no order as to costs.

(A.R. DAVE,J.)

siji